

ORIGINAL

IN THE SUPREME COURT OF OHIO

ERNEST HOLLINGSWORTH

Petitioner,

-vs-

DEB TIMMERMAN-COOPER, Warden

Respondent.

* Case No. 11-1095
* On Review of the Certified
* Questions from the United States
* District Court, Southern District of
* Ohio, Western Division
*
* U.S. District Court Case No.
* 1:08-CV-00745
*

MERIT BRIEF OF PETITIONER ERNEST HOLLINGSWORTH

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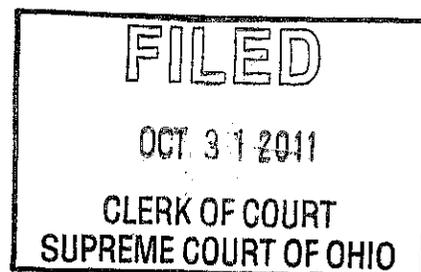


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STATEMENT OF THE FACTS

Hollingsworth was charged with marihuana possession and trafficking. (District Court Doc. 9-1, Exhibit 1, Indictment) R.C. 2925.11(A) and R.C. 2925.03(A)(2). Because the marihuana weighed in excess of 20,000 grams, he faced a mandatory-minimum term of 8-years imprisonment. R.C. 2925.11(C)(3)(f). Trial counsel filed a motion to suppress evidence. (District Court Doc. 9-1, Exhibit 2) The motion was overruled. (District Court Doc. 9-1, Exhibit 6, Findings of Fact and Conclusions of Law)

In the middle of trial, Hollingsworth pled no contest to the indictment. (District Court Doc. 9-1, Exhibit 8, Plea Agreement) He signed a plea form that waived five constitutional rights: (i) the right to a jury trial, (ii) the right to confront witnesses, (iii) the right to compulsory process, (iv) the right for the state to prove his guilt beyond a reasonable doubt, and (v) the right to remain silent. (Id.) The trial court conducted a plea colloquy with Hollingsworth that canvassed each of these five rights. (District Court Doc. 28, Exhibit 1, Plea and Sentencing Hearing, pp. 587) Hollingsworth indicated on the record that he wanted to waive his trial rights and that he understood what he was doing. (Id. at 592) The trial court, after hearing a statement of facts from the prosecutor, sentenced Hollingsworth to the mandatory-minimum term of 8-years imprisonment for the possession and trafficking, to run concurrently. (Id. at 596)

At no point did Hollingsworth expressly waive his right to the effective assistance of counsel. His plea agreement did not include any waiver of rights beyond the five addressed above, required by Crim.R. 11(C)(2)(c). Nor did the

trial court tell Hollingsworth that his no-contest plea waived, or impliedly waived, his ability to bring an ineffective-assistance claim in a collateral suit, as would be required under Crim.R. 11(C)(2)(b).

Hollingsworth and his new attorney developed both new and previously ignored evidence related to the motion to suppress. For example, he developed significant statistical evidence regarding the patrol officer's pattern of race discrimination during traffic stops; and he developed evidence that the drug dog that alerted to his vehicle was not properly trained and lacked current certificates. (District Court Doc. 9-2, Exhibit 18, Hollingsworth's post-conviction petition with attachments) Hollingsworth filed a post-conviction petition based on ineffective assistance due to his trial counsel's failure to investigate and present this new and previously ignored suppression evidence. (Id.) However, the appellate court determined that Hollingsworth's petition was filed out of time, and dismissed it. (District Court Doc.9-3, Exhibit 26, Hamilton County Court of Appeals Judgment Entry) This court accepted Hollingsworth's case to decide when the statute-of-limitations for a post-conviction petition begins to run, but dismissed it after oral argument as improvidently granted. *State v. Hollingsworth*, 118 Ohio St.3d 1204, 2008-Ohio-1967.

Hollingsworth next filed a habeas petition in federal court. (District Court Doc. 1, Petition for Writ of Habeas Corpus) He asserted the same ineffective-assistance claim that was presented in state court. After deciding that the missed statute-of-limitations was not a valid procedural bar to habeas review (District Court Doc. 24, Order Adopting Report and Recommendation), the federal court held that Hollingsworth's no-contest plea and resulting conviction was proof of a

waiver of his right to effective assistance during the pretrial motion hearings. (District Court Doc. 50, Order Adopting Report and Recommendation) Hollingsworth objected to this. (District Court Doc. 45, Motion to Certify State Law Question) He contended, *inter alia*, that Ohio law and this court's holding in *Elevators Mutual Insurance Co. v. J. Patrick O'Flaherty's, Inc.*, 125 Ohio St.3d 362, 2010-Ohio-1043 precluded the state's use of Hollingsworth's no-contest plea and resulting conviction as evidence of a waiver of the right to effective assistance during pretrial proceedings. (Id.)

The federal court conceded that Hollingsworth's objection was colorable and certified the following question to this court: "whether the state may use a defendant's no-contest plea and the resulting conviction as evidence of a waiver of a constitutional right in a subsequent collateral attack on that conviction under Ohio's post-conviction statute, R.C. 2953.21, or the federal habeas statute, 28 U.S.C. § 2254." (District Court Doc. 50, Certification to the Supreme Court of Ohio) This court accepted the certified question as framed by the federal court. This brief follows.

ARGUMENT

PROPOSITION OF LAW NO I:

The state is prohibited under Crim.R. 11(B)(2) and Evid.R. 410 from using a defendant's no-contest plea and resulting conviction as evidence of a waiver of the right to effective assistance of counsel in a subsequent collateral attack on the criminal conviction.

When a court rule is unambiguous, it must be applied and not interpreted. *State ex rel. Fifth Third Mtge. Co. v. Russo*, 129 Ohio St.3d 250, 2011-Ohio-3177, ¶ 16. Crim.R. 11(B)(2) and Evid.R. 410 are both unambiguous. Crim.R. 11(B)(2)

provides that " * * * the plea [of no contest] or admission shall not be used against the defendant in any subsequent civil or criminal proceeding." In turn, Evid.R. 410 states that " * * * the following is not admissible in any civil or criminal proceeding against the defendant who made the plea * * *: a plea of no contest or the equivalent plea from another jurisdiction." That is why this court in *Elevators Mutual Insurance Co. v. J. Patrick O'Flaherty's, Inc.*, 125 Ohio St.3d 362, , 2010-Ohio-1043 applied these Rules, and held that neither (i) a no-contest plea nor (ii) the resulting conviction could be used as evidence in subsequent civil litigation. According to *Elevators Mutual*, this prohibition is expressed by the Rules in absolute terms, and any exception must come from a rule amendment and not judicial activism. *Id.* at ¶16.

The *Elevators Mutual* holding applies to Hollingsworth's case. Here, the state has attempted to use Hollingsworth's no-contest plea and conviction to prove in federal habeas that Hollingsworth impliedly waived his right to effective assistance. (Respondent's Preliminary Memorandum, pp. 2) The federal habeas case was filed after Hollingsworth's no-contest plea in state court, and is civil in nature. See, Fed.R.Civ.P. 81(a)(4)(A); Federal Rules Governing Section 2254 Cases in the United States District Courts; and, *Mayle v. Felix* (2005), 545 U.S. 644, 654, Nt. 4 ("[h]abeas corpus proceedings are characterized as civil in nature.")

Likewise, Ohio post-conviction cases under R.C. 2953.21 are quasi-civil in nature. They are governed by the Ohio Appellate Rules as applicable to civil actions and the Ohio Civil Rules. *State v. Nichols* (1984), 11 Ohio St.3d 40. Just as in civil cases, a post-conviction petitioner can amend his petition without leave

of court at any time before the state responds; the state then responds by answer or motion; either party can file for summary judgment; and the trial court is required to file findings of fact and conclusions of law regarding its judgment. R.C. 2953.21(D)-(G). The Ohio Civil Rules control all aspects of post-conviction litigation unless the post-conviction statute provides for a contrary procedure. *State v. Lawson* (1995), 103 Ohio App.3d 307, 313.

So, in Ohio post-conviction or federal habeas cases, the state is prohibited by *Elevators Mutual* from using a no-contest plea or conviction as evidence that a defendant impliedly waived his right to effective assistance in the underlying case.

PROPOSITION OF LAW NO II:

The state may use any other relevant evidence, except a no-contest plea and resulting conviction, as proof of a waiver of a constitutional right in a collateral attack on the criminal conviction, provided that the waiver was knowing, intelligent, voluntary, and affirmatively found in the trial record.

The second reason to prohibit the state's use of a no-contest plea and conviction to prove waiver of the right to effective assistance is that the no-contest plea and conviction is *irrelevant* to whether a litigant waived effective assistance under Ohio law.

It is well established that waiver is an intentional relinquishment of a known right. To ensure that a citizen appreciates what he has purportedly given up, our courts "indulge every reasonable presumption against waiver of fundamental constitutional rights." *State v. Adams* (1989), 43 Ohio St.3d 67, 69, quoting *Johnson v. Zerbst* (1938), 304 U.S. 458, 464, quoting *Aetna Ins. Co. v.*

Kennedy (1937), 301 U.S. 389, 393. The presumption against waiver cannot be overcome on a silent or ambiguous record.

A recent example of these waiver principles is *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1. There, the defendant pled no contest to four theft offenses. *Id.* at ¶ 4. Two of these offenses were allied under R.C. 2941.25. *Id.* at ¶ 5. Yet the trial court imposed four separate sentences, and failed to merge the two allied offenses. *Id.* at ¶ 6. On direct appeal, the state contended that the defendant waived his right to challenge his unlawful sentence when he agreed to a sentence as part of his no-contest pleas. *Id.* at ¶ 32. But this court disagreed. Applying the well-established waiver rules, this court observed that no specific waiver appeared in the record, and that the trial court never told the defendant that his plea bargain eliminated his right to challenge an unlawful sentence. *Id.* Therefore, this court determined that the presumption against waiver was not overcome. *Id.*

Hollingsworth's case involves the same analysis. His plea agreement fails to mention a waiver of his right to effective assistance. His plea colloquy did not include that specific waiver. And the trial court never informed him, as required by Crim.R. 11(C)(2)(b), that " * * * the effect of the plea of * * * no contest" was to eliminate a future ineffective-assistance claim. Therefore, there is no record evidence of Hollingsworth's express waiver of his right to effective assistance. So the presumption against waiver carries the day.

Nevertheless, the state seeks to circumvent these rules by arguing that Hollingsworth's no-contest plea and conviction *themselves* constitute an *implied* waiver of his right to effective assistance. But that cannot be.

The implied waiver theory is a radical departure from the conventional view that waiver is an intentional relinquishment of a known right. Indeed, the very premise that waiver can be implied is hostile to the current view that waiver must be express in order to prove that the waived right was known to the defendant and understood. Under the state's theory, the Crim.R. 11 plea colloquy itself is or should be superfluous, since a guilty or no-contest plea would impliedly waive a defendant's five constitutional trial rights.

The implied waiver theory lacks decisional support and actually conflicts with recent effective-assistance cases. For example, in *Padilla v. Kentucky* (2010), 559 U.S. ____, 130 S.Ct. 1473, the defendant pled guilty to a deportable marihuana offense after receiving erroneous immigration advice from his trial counsel. In state post-conviction, Padilla alleged ineffective assistance. The Supreme Court held that the erroneous immigration advice was defective performance under *Strickland*. Yet, the *Padilla* holding would not survive the state's implied waiver theory because Padilla's guilty plea would have impliedly waived his successful effective-assistance claim.

In *State v. Dalton*, 153 Ohio App.3d 286, 2003-Ohio-3813, the defendant pled guilty to pandering obscenity involving a minor for writing fictional accounts of underage rape. *Id.* at ¶ 4 and 5. After sentencing, the defendant moved the trial court to withdraw his plea under Crim.R. 32.1. On appeal from that motion, the court held that the defendant's fictional writing about underage sex failed to constitute an offense, and determined that trial counsel was ineffective in authorizing a plea to a non-offense. *Id.* at ¶ 29. Yet, the *Dalton* holding would

not survive the state's implied waiver theory because Dalton's guilty plea would have impliedly waived his successful ineffective assistance claim.

In *United States v. Allen* (6th Cir. 2002), 53 Fed. Appx. 367, 2002 U.S. App. LEXIS 27194) trial counsel failed to convey a plea bargain to the defendant. On trial day, the trial court refused to accept any plea bargain, and required the defendant to plead to the indictment as charged. On direct appeal, the Sixth Circuit held that it is ineffective assistance to fail to convey a plea bargain where it is probable that the defendant would have accepted the bargain. Yet, the *Allen* holding would not survive the state's implied waiver theory because Allen's guilty plea would have impliedly waived his effective-assistance claim.

Finally, in *State v. Blackert*, 9th Dist., 2006-Ohio-6670, the defendant pled no contest and was convicted of receiving stolen property with respect to a truck. Blackert was sentenced to a 1-year term to be served consecutively to a 1-year sentence for the theft of the very same truck. *Id.* at ¶2-3. On post-conviction review, the appellate court held that the defendant received ineffective assistance because his trial counsel failed to appreciate and argue that the theft and receiving stolen property charges for the same truck were allied offenses, which barred consecutive sentences. *Id.* at ¶6. Yet, the *Blackert* holding would not survive the state's implied waiver theory because Blackert's no-contest plea would have impliedly waived his successful effective-assistance claim.

In addition to conflicting with all the cases, described above, that allow for an ineffective-assistance claim after a guilty or no-contest plea, the state's implied waiver theory would make for bad policy. The implied waiver theory will require a defendant to take a case to verdict to preserve any effective-assistance claim. So

where the evidence is undisputed, and even where the defendant has no belief or evidence that his attorney has defectively performed, he will be required to try his case to preserve an effective-assistance claim that may not even exist. The law should not encourage this needless exercise.

Finally, Opinion 2001-6 from the Ohio Board of Commissioners on Grievances and Discipline states that it is a violation of legal ethics for a defense attorney or prosecutor to negotiate a waiver of post-conviction effective-assistance claims. While this opinion does not address whether "* * * such waivers are legal or constitutional[,]" it does add to Hollingsworth's argument in this case. It would be arbitrary if Ohio ethics *prohibited* a lawyer from negotiating a post-conviction or habeas waiver of effective assistance in a no-contest plea, yet Ohio criminal procedure *required* an implied and silent waiver of that very right by the very same plea.

CONCLUSION

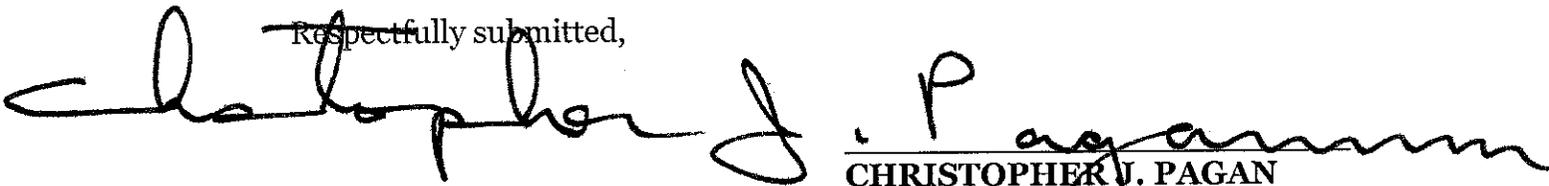
An Ohio no-contest plea and resulting conviction cannot be used in evidence during subsequent post-conviction litigation to prove a waiver of effective assistance from the underlying proceedings. Further, the plea colloquy based on Crim.R. 11(C)(2)(c) for a no-contest plea does not touch upon effective assistance during pretrial proceedings, and cannot operate as an implied waiver of that right.

To prove a waiver of effective assistance during pretrial proceedings for post-conviction purposes, the state is authorized under Ohio law to use any evidence, other than a no-contest plea or resulting conviction, to establish that

the waiver was both (i) knowing, intelligent, and voluntary, and (ii) in the trial record.

To the Court, the instant Merit Brief is

Respectfully submitted,

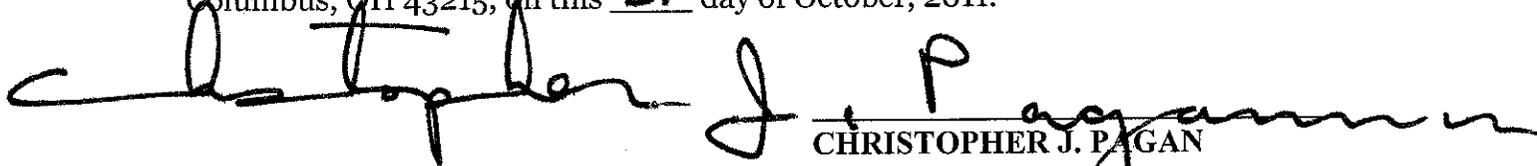


CHRISTOPHER J. PAGAN

COUNSEL FOR PETITIONER,
ERNEST HOLLINGSWORTH

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon M. Scott Criss, Ohio Attorney General's Office, 150 E. Gay Street, 16th Floor, Columbus, OH 43215, on this 31 day of October, 2011.



CHRISTOPHER J. PAGAN

COUNSEL FOR PETITIONER,
ERNEST HOLLINGSWORTH

The Supreme Court of Ohio

FILED

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CLERK OF COURT
SUPREME COURT OF OHIO

Ernest Hollingsworth

Case No. 2011-1095

v.

ENTRY

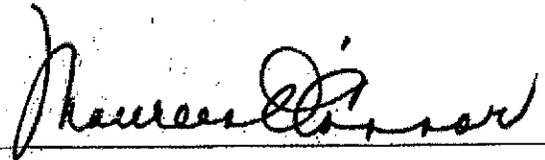
Deb Timmerman-Cooper, Warden

This cause is here on the certification of a state law question from the United States District Court for the Southern District of Ohio, Western Division. Upon review pursuant to S.Ct. Prac. R. 18.6, the Court will answer the following question:

“Do Ohio R. Crim. P. 11(B)(2) and Ohio R. Evid. 410(A)(2), which prohibit the use of a defendant's no contest plea against the defendant "in any subsequent civil ... proceeding" apply to prohibit the use of such a plea in a subsequent civil proceeding which is a collateral attack on the criminal judgment which results from the no contest plea, such as a petition for post-conviction relief under Ohio Revised Code § 2953.21, or a federal habeas corpus action under 28 U.S.C. § 2254?”

It is ordered by the Court that petitioners shall file their merit brief within 40 days of the date of this entry and the parties shall otherwise proceed in accordance with S.Ct. Prac. R. 6.2 - 6.4; and S.Ct. Prac. R. 18.7.

(US District Court for the Southern District of Ohio, Western Division, No.1:08-CV-00745.)



Maureen O'Connor
Chief Justice

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

ERNEST HOLLINGSWORTH,

Petitioner,

-vs-

DEB TIMMERMAN-COOPER, Warden,

Respondent.

:

Case No. 1:08-cv-745

:

District Judge S. Arthur Spiegel
Magistrate Judge Michael R. Merz

:

REPORT AND RECOMMENDATIONS ON REQUEST FOR CERTIFICATION

This habeas corpus case is before the Court on Petitioner's Objection (Doc. No. 45) to the Magistrate Judge's Supplemental Report and Recommendations (Doc. No. 43).

Included within the Objection is a new request that this Court certify a controlling question of state law to the Ohio Supreme Court. That request is essentially a "dispositive" motion, since the Ohio Supreme Court will only accept a certification from a United States Magistrate Judge who is sitting with plenary consent under 28 U.S.C. § 636(c). Ohio S. Ct. Prac. R. 18.3.

The Magistrate Judge respectfully recommends this request be GRANTED and the District Court certify to the Ohio Supreme Court the following question of law: Do Ohio R. Crim. P. 11(B)(2) and Ohio R. Evid. 410(A)(2), which prohibit the use of a defendant's no contest plea against the defendant "in any subsequent civil ... proceeding" apply to prohibit the use of such a plea in a subsequent civil proceeding which is a collateral attack on the criminal judgment which results from the no contest plea, such as a petition for post-conviction relief under Ohio Revised Code §

2953.21 or a federal habeas corpus action under 28 U.S.C. § 2254?

As Petitioner notes, this is likely to be a frequently recurring question. Furthermore, broad language in recent Ohio Supreme Court case law¹, on which Petitioner relies, suggests an affirmative answer to the question, but the Magistrate Judge believes an affirmative answer would lead to absurd results in habeas and § 2953.21 cases. See Report and Recommendations, Doc. No. 40, PageID 628. Thus the Magistrate Judge believes the importance of the question would justify expending the scarce judicial resources of the Ohio Supreme Court on an answer. While the Magistrate Judge believes this Court can answer the question using ordinary rules of statutory interpretation, it would be much better to have a definitive answer from the Ohio Supreme Court.

November 23, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas*

¹*Elevators Mutual Insurance Co. v. J. Patrick O'Flaherty's, Inc.*, 125 Ohio St. 3d 362, 928 N.E. 2d 685 (2010).

v. *Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ERNEST HOLLINGSWORTH,	:	
	:	
	:	NO. 1:08-CV-00745
Petitioner,	:	
	:	
v.	:	OPINION AND ORDER
	:	
DEB TIMMERMAN-COOPER, Warden,	:	
	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's October 12, 2010 Report and Recommendation (doc. 40), Petitioner's Objection to the Magistrate Judge's Report and Recommendation (doc. 42), the Magistrate Judge's Supplemental Report and Recommendation (doc. 43), Petitioner's Objection to the Supplemental Report and Recommendation (doc. 45), and Magistrate Judge's November 23, 2010 Report and Recommendation on Request for Certification (doc. 46). For the reasons set forth herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's November 23, 2010 Supplemental Report and Recommendation (doc. 43) and CERTIFIES the question herein to the Ohio Supreme Court.

I. Background Information

Petitioner brought a habeas corpus action under 28 U.S.C. § 2254, asserting that he received ineffective assistance of trial counsel (doc. 40). Respondent asserts that by pleading no contest

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in the underlying criminal matter, Petitioner has "waived any error, constitutional or otherwise that occurred prior to his plea" (Id.). In his briefing, Petitioner is arguing that under Ohio law, his no contest plea cannot be used against him in a habeas corpus proceeding because it is a civil matter (doc. 42, citing Ohio Crim. R. 11(B)(2); Ohio Evid. R. 410).

The Magistrate Judge, in reviewing the theory that a no contest plea could not be used in a habeas proceeding found that there was no indication that the Ohio Supreme Court intended the broad language in recent Ohio Supreme Court case law to apply in collateral attacks on the very criminal judgment that results from a no contest plea (doc. 40, citing Elevators Mutual Insurance Co. v. J. Patrick O'Flaherty's, Inc., 125 Ohio St. 3d 362, 928 N.E.2d 685 (2010) (finding that Ohio Crim. R. 11(B)2, and Evid. R. 410(A) bar the use of a no contest plea "in any subsequent civil or criminal proceeding" and therefore such plea was inadmissible in an action for declaratory judgment for insurance coverage). The Magistrate Judge opined that to permit such an interpretation to apply in a habeas proceeding would utterly eviscerate the utility of the no contest plea to bring finality to criminal proceedings (Id.). However, as the language in Elevators Mutual Insurance Co. suggests that such interpretation could apply, the Magistrate Judge recommended the Court certify the question to the Ohio Supreme Court for a definitive answer (doc. 46).

II. Certification

Under the Supreme Court of Ohio's Rules of Practice, a federal court may certify a question to the Ohio Supreme Court when there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of the Ohio Supreme Court. Ohio S.Ct. Prac. R. 18.1. Under such procedure, the court must issue an Order specifying the question of law to be answered and the circumstances from which the question arises. Ohio S.Ct. Prac. R. 18.2. The Clerk of the certifying Court must 1) serve copies of the certification order on all parties or their counsel of record, and 2) file with the Clerk of the Ohio Supreme Court the certification Order under seal of the certifying court. Ohio S. Ct. Prac. R. 18.3.

III. Discussion

Having reviewed this matter, the Court finds the Magistrate Judge's recommendation for certification well-taken. Although the Court agrees that it would seem absurd to disallow the use of a no contest plea in a habeas proceeding, there is no controlling precedent in Ohio regarding Crim. R. 11(B) and Evid. R. 410(A)(2)'s application to federal habeas litigation. Clearly, Respondent intends to use Petitioner's plea against him. Because it appears that this state law issue will reoccur in habeas litigation, the Court finds it appropriate to certify the question to the Supreme Court of Ohio.

Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation that it certify the following question to the Ohio Supreme Court:

Do Ohio R. Crim. P. 11(B)(2) and Ohio R. Evid. 410(A)(2), which prohibit the use of a defendant's no contest plea against the defendant "in any subsequent civil ... proceeding" apply to prohibit the use of such a plea in a subsequent civil proceeding which is a collateral attack on the criminal judgment which results from the no contest plea, such as a petition for post-conviction relief under Ohio Revised Code § 2953.21, or a federal habeas corpus action under 28 U.S.C. § 2254?

The Court further HOLDS Petitioner's Petition in abeyance pending a response from the Ohio Supreme Court on such question, and DIRECTS the Clerk, in compliance with Ohio S. Ct. Prac. R. 18.3 to serve copies of this Order electronically on counsel of record consistent with standard practice, but also to file with the Clerk of the Ohio Supreme Court this Order, under seal of this Court.

Finally, in accordance with S.Ct. Prac. R. 18.2, the names, addresses, and telephone numbers of counsel for each party are as follows:

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SO ORDERED.

Dated:

6/23/11



S. Arthur Spiegel
United States Senior District Judge

CONSTITUTION OF UNITED STATES

AMENDMENTS

Current through 2010

Amendment VI. Rights of Accused in Criminal Prosecutions

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

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